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FILED
04/20/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0901-R-2022
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Yellowstone Trails Ranch Homeowners Assn

CASE 43B-0901-R-2022
43B 30430-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 43B 30430-00 appeared in the Preliminary Decree with the following decree exceeded issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 115 MINER'S INCHES DECREED IN CASE NO. 7583 , PARK COUNTY. 125017-00, 194340-00, 194471-00, 194475-00, 30430-00, 194336-00.

A review of all the claims identified in the remark shows that there are two sets of multiple use claims, and that the calculated flow rate total did not take that into consideration. For the multiple use claims, the flow rate should only be counted once when reviewing whether there is a decree exceeded issue. In this instance, the claimed flow rate total is actually the exact amount of the decreed right being claimed: 115.00 miner's inches. The remark should not have been added.

The ditch identified on the abstract for this claim in the Preliminary Decree is Mill Creek Flat Ditch but the point of diversion legal description is for Upland Ditch, not for Mill Creek Flat Ditch. As there were multiple claims for Upland Ditch and Mill Creek Flat Ditch and apparent confusion over the correct legal description for the headgate for each ditch, the Court requested assistance from DNRC to determine the correct point of diversion legal descriptions and to prepare a marked aerial photograph for the Court and various claimants to use to determine the correct ditch and its point of diversion legal description. On February 26, 2021 the DNRC provided a new marked aerial photograph copy.

The December 14, 2022 Order Consolidating Case And Setting Filing Deadline included information about this confusion and included a copy of the new marked aerial photograph. This Order states:

ORDERED that the deadline is **January 31, 2023** for the claimant to file their written statement identifying the correct point of diversion legal description and the correct ditch name.

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim.

Motions to continue or for extensions shall be in writing and shall state a good cause for the motion. The court may grant an untimely motion for continuance or extension upon a showing of exigent circumstances.

Nothing was filed by the claimant.

The February 8, 2023 Order Setting Show Cause Deadline states:

The marking on the map attached to the Statement of Claim indicates that Mill Creek Flat Ditch is the diversion. The Preliminary Decree states that the right is diverted by Mill Creek Flat Ditch and the point of diversion is in the NENENW section 3, T6S, R9E, PARK. This is the legal description for Upland Ditch stated on the new marked aerial photograph prepared by the DNRC. For Mill Creek Flat Ditch, the point of diversion legal description is NESWNE section 3, T6S, R9E, PARK as stated on the new marked aerial photograph prepared by the DNRC. Therefore, it is

ORDERED that the deadline is **March 10, 2023** for the claimant to file a written statement showing cause why the Court should not change the Mill Creek Flat Ditch point of diversion legal description on this claim to the NESWNE section 3, T6S, R9E, PARK. If not filed by March 10, 2023, the Court will conclude the claimant agrees with this change and will proceed with changing the claim as detailed above.

Nothing was filed by the claimant. These Orders are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The decree exceeded issue remark should be removed as erroneous.
2. The Statement of Claim states that Mill Creek Flat Ditch is the diversion for this claimed right. The Preliminary Decree states that the ditch name is Mill Creek Flat Ditch and the point of diversion legal description is NENENW section 3, T6S, R9E, PARK. The ditch name should remain Mill Creek Flat Ditch but the legal description should be corrected to the Mill Creek Flat Ditch point of diversion legal description. The legal description should be NESWNE section 3, T6S, R9E, PARK.

CONCLUSION OF LAW

The Statement of Claim and the new marked aerial photograph prepared by the DNRC are sufficient to contradict and overcome the prima facie claim as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Yellowstone Trails Ranch Homeowners Assn
~~% Joseph D. Lamm~~
~~PO Box 1390~~
1 Morgan Trl
Livingston, MT 59047

Note: Service List Updated 4-20-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30430-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: YELLOWSTONE TRAILS RANCH HOMEOWNERS ASSN
1 MORGAN TRL
LIVINGSTON, MT 59047 8723

Priority Date: JUNE 1, 1908

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 161.60 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 40.58

Source Name: MILL CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	3	6S	9E	PARK

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: MAY 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.58		NWSW	18	5S	9E	PARK
Total:	40.58						

THE PLACE OF USE INCLUDES TRACTS 11 AND 12 CERTIFICATE OF SURVEY NO. 258 , PARK COUNTY.

Remarks:

AUTHORIZATION TO CHANGE ISSUED 07/21/1988 FOR CHANGE IN POINT OF DIVERSION. NOTICE OF COMPLETION DUE 11/30/1990. SEE 43B 30427-00

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.